

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, NATIONAL
LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, LEAGUE OF WOMEN
VOTERS OF TEXAS, RALPH
EDELBAUGH, and BARBARA MASON
Plaintiff,

V.

GREG ABBOTT, in his official capacity as Governor of Texas, RUTH HUGHS, in her Official capacity as Texas Secretary of State, DANA DEBEAUVOIR, in his official capacity as Travis County Clerk, CHRIS HOLLINS, in his official capacity as Harris County Clerk; JOHN W. OLDHAM, in his official capacity as Fort Bend County Elections Administrator; LISA RENEE WISE, in her official capacity as El Paso County Elections Administrator;

Defendants.

[illegible]

CIVIL ACTION NO.: 1:20-cv-1006

DECLARATION OF DEFENDANT JOHN W. OLDHAM, IN HIS OFFICIAL CAPACITY AS FORT BEND COUNTY ELECTIONS ADMINISTRATOR

DECLARATION OF DEFENDANT JOHN W. OLDHAM

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DEFENDANT JOHN W. OLDHAM, IN HIS
OFFICIAL CAPACITY AS FORT BEND COUNTY
ELECTIONS ADMINISTRATOR

DECLARATION OF JOHN W. OLDHAM

I, John W. Oldham, declare:

1. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am submit this declaration to explain the impact of the Governor's Proclamation of October 1, 2020 (the "Proclamation"), on the election process in Fort Bend County, and to provide the Court with current information about election planning, conduct, and implementation.

Early Voting Clerk Role, Fort Bend County, and the Governor's Proclamations

3. As the Elections Administrator for Fort Bend County, I am the early voting clerk for Fort Bend County, Texas. *See* TEX. ELEC. CODE § 83.001. As "early voting clerk," I have the authority and duty to "conduct the early voting," which includes early voting both in person and by mail. TEX. ELEC. CODE §§ 83.001, 83.002. I have served as the Fort Bend County Elections Administrator since 2008. Prior to that, I have served in elections administration since graduating from the University of Southern Illinois in 1975.

4. I have the duty to administer elections in the ninth-most-populous county in Texas, with approximately 830,000 people, 477,000 registered voters, and a highly diverse electorate. County officials predict that Fort Bend County will have one million residents in two years. Fort Bend County, Texas, is the second-largest County by population in the Houston-metropolitan region and one of the most diverse and fastest-growing counties in the country. The County's population has nearly tripled since 2000 while the ratio of its Anglo population has decreased to 29%, the remainder is almost evenly divided among Latinos, African-Americans, and East and South Asians.

5. Fort Bend County constitutes 885 square miles. Traveling from the County's northeast or southeast corner to the current location of the main election office is a 50-mile round trip. As a suburban county, Fort Bend County's eastern portion often has traffic congestion such that traveling across the county to a central location and back can easily take more than two hours of driving.

6. Greg Abbott, Governor of Texas, announced plans to expand early voting for the November General Election in May and issued a proclamation doing so on July 27. This was not unexpected, or unprecedented, since Governor Abbott issued a similar proclamation to expand early voting in the July Primary Runoff Election. Patrick Svitek, *Texas will extend early voting period this fall, Gov. Greg Abbott says*, Tex. Trib., May 28, 2020, <https://www.texastribune.org/2020/05/28/texas-2020-early-voting-greg-abbott-coronavirus/>; Gov. Greg Abbott, Proclamation, July 27, 2020 ("July 27 Proclamation").

7. Governor Abbott's decision to expand the number of early voting days was crucial because it enabled voters to cast their ballots while maintaining social distance and empowered those such as myself who plan and conduct elections to help voters avoid long lines and maintain social distance in what is sure to be the highest turnout election in Texas history. Governor Abbott's July 27 Proclamation also allowed voters to return their completed mail-in ballot in person at any time, not just on Election Day. Prior to the July 27, 2020 Proclamation, Texas law provided that voters may return their ballots by mail, by common carrier, or in person, but if they do so in-person they may only do so on Election Day to the early voting clerk's office while the polls are open and show identification just as they would if voting in person. TEX. ELEC. CODE § 86.006(a-1). Because a ballot returned in violation of § 86.006 "may not be counted," *id.*

§ 86.006(h), the legality of methods of returning mail-in ballots be very clear, or votes may be challenged in an election contest.

Logistics of Planning an Election During the Pandemic

8. Elections are extraordinarily complex to plan and implement in a democracy, even when there is not a global pandemic raging. American democracy requires that *every* eligible voter have effective access to a ballot and be provided reasonable and safe opportunities to cast their votes securely and privately because voting is an individual right, not a collective one. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). The larger and more diverse a community, and the higher the expected turnout, the more difficult this becomes. Multiple mechanisms of voting are useful, as they are more likely to accommodate voters. These include voting by mail, voting in-person during the Early Voting period, voting in-person on Election Day, curbside voting for people with disabilities, and other accommodations for voters with special needs.

9. Prompted by the challenges of conducting an election during a pandemic, our office has engaged in several innovative practices for the general election. For example, we planned on allowing three additional drop-off locations for mail-in ballots. Just before the Proclamation, and in conjunction with the County Judge, we announced the following locations closer the County's population centers: (1) 22333 Grand Corner Drive, Katy, TX 77494; (2) 307 Texas Parkway, Missouri City, TX 77489; and (3) 5855 Sienna Springs Way, Missouri City, TX 77459. We also planned at fourth at 12919 Dairy Ashford Rd, Ste 200, Sugar Land, TX 77478.

10. Although voter behavior can be unpredictable, especially when implementing new election or business processes, or when conducting an election in unusual circumstances such as during the ongoing pandemic, deep analysis of past voting data and current voting conditions is extremely helpful toward planning a given election.

11. I anticipate at least 330,000 Fort Bend County voters will exercise their right to vote during this fall's general election. For planning purposes, our office has encouraged voters to vote by mail if they are eligible, or otherwise to vote during the Early Voting period (and as early as possible during that voting period). Our goal is to frontload voters as much as possible so that on Election Day itself, lines will be minimized to better enable social distancing for the safety of voters and election workers alike. Because of the ongoing pandemic and the highly anticipated nature of the election, I expect higher than usual rates of voting by mail in the upcoming general election. I estimate there will be 35,000 to 40,000 voters who vote by mail, 210,000 to 230,000 voters who vote early in person, and 60,000 to 70,000 voters who vote on Election Day in person.

12. In the last presidential general election, around 15,000 mail-in ballots were cast, which was then a record for Fort Bend County. The July runoff saw a sharp increase both in voter turnout and the ratio of voters who vote by mail with over 10,000 of the 80,000 ballots cast by mail. As of today, we have processed more than 32,000 applications to vote by mail, more than double the total mail-in ballots received in prior elections. Of these 32,000+ applications, 90% are from voters aged 65 or older.

13. I have conducted detailed modeling and analysis to determine the likely turnout, methods of voting that voters may choose (mail-in ballots, early voting in person, or Election Day), and the best allocation of resources to meet voter demand without creating long lines or other circumstances where social distancing would not be possible. Our office selected the quantity and location of early voting locations and ballot drop-off locations with reliance upon the Governor's July 27 Proclamation.

14. We arranged to apply the same ballot collection and security protocols at each drop-off location, whether at election administration headquarters or elsewhere. All ballot drop-off

locations are equally secure. We trained enough staff at each location in election protocols and rules so that two such trained employees are present at all times while the location is accepting ballots. It requires staff to ensure that (1) the voter signs a roster (just as they would when voting in-person), *see* Exhibit C to the October 3, 2020 Declaration of Chris Hollins [Dkt. No. 8–1 at 19], Hand-Delivery Signature Roster, (2) the voter presents valid identification to comply with Texas Election Code § 63.0101 (just as they would when voting in-person), and (3) the voter signs the carrier envelope (just as they would when sending their ballot by mail).

15. Ballots are then placed in a box sealed by tamper-proof seals. Our office planned to deliver these sealed boxes daily to election headquarters. This process is more secure than the voter using the mail system, in that the ballots are kept in sealed, secure boxes from the moment they leave the voter’s hand. There is no unexpected administrative burden to collect ballots from the various annexes and transport them to our headquarters.

The Effect of the Governor’s Proclamation

16. This last-minute change to election procedures is causing voter confusion. Reducing our drop-off locations from three to one will increase congestion as the volume of ballot returns increases over the next few weeks. Particularly because of the widely-publicized problems with the U.S. Postal Service (“USPS”), some voters may have trouble receiving their ballot until close to Election Day, and will thus have to return their ballot in person in order to ensure it is returned on time. *See see* Exhibit E to the October 3, 2020 Declaration of Chris Hollins [Dkt. No. 8–1 at 21–23], Exhibit E, USPS Ltr. to Texas Secretary of State, July 30, 2020 (warning that first-class U.S. mail will take one week for delivery). If we are forced to reduce to one location, I anticipate that toward the end of early voting and especially on Election Day, we will see massive

lines to return ballots in person. In addition, voters without reliable transportation will be unable to get to our office, which could be 25 miles away, in time to have their vote counted.

17. Our multiple ballot drop-off locations have been advertised to voters via a press conference and extensive planning by County officials. Since the Governor's October 1 Proclamation, County officials have had to consider significant adjustments to our operating plans. Tomorrow, Fort Bend Commissioners Court will decide the best location for the one drop-off location allowed under the Governor's Proclamation.

18. Reducing the drop-off locations from four to one will not enhance security of the ballots in any way, as it will force more voters to use USPS rather than see their ballot securely delivered straight to a sealed, secure ballot box.

19. The Proclamation will make it much more difficult for some voters to return their ballots by limiting counties to only one drop-off location during the early voting period. Fort Bend County is presently assessing the best permitted location for the one secure drop-off location. The Election Administrator's Office sits in the middle of the County, but the population center is in the eastern portion of the County and across the Brazos River which limits transportation options given the limited crossings. The size of the County, and whichever location is selected, would make it difficult, if not impossible, for some voters to return their ballots to only that single drop-off location. This will undoubtedly force some voters to decide if they will risk their health by voting in person or if they instead will not vote at all. No Texas voter should have to make that decision.

20. In my experience, rural voters, voters who live furthest from the county drop-off location, lower-income voters, and voters without access to transportation have the hardest time traveling significant distances to vote or drop off their ballots. Further, in the July primary runoff our office excluded 299 mail-in ballots. The primary reason for rejection was untimely receipt in

our office. Because Fort Bend County mail is sorted in the North Houston USPS Sorting Center, it is not uncommon for mail-in ballots to arrive several days after mailing, and, in some cases, several weeks after mailing. For at least a third of the 299 rejected ballots, the voter likely mailed it by election day and such could not be counted because it arrived after Wednesday, July 15, or arrived on that date but without a postmark.

21. This change also burdens the Elections Office administratively. We are having to change our voter education materials and our staff training. I also expect that the Proclamation will cause substantial confusion among voters as to where they can drop off their ballots during the early voting period. Our call centers have been inundated with voter inquiries about their rights in light of the Proclamation, and we have had to field calls from other elected officials' offices, who are themselves flooded with calls.

Security of Mail-In Ballots

22. In my experience, and given the careful planning and process vetting by my office, the ballot drop-off locations are secure. We have chain-of-custody documentation for the ballot boxes. We have rosters requiring signatures so that each batch has an audit trail as to the count of ballots and a way of verifying that it was in fact the voter who dropped off the ballot. In my experience, Texas does not have a wide-scale problem with election fraud. Mail-in ballots are highly regulated and loaded with paper trails so that any irregularity is spotted and addressed.

23. The mail-in ballot process contains many, heavily regulated steps.

24. We send ballots out to voters on a continuous basis. Typically, about forty-five (45) days before an election, we prioritize sending ballots to military and overseas voters, then to others who requested to vote by mail. This was done on September 19. On October 2, we sent the first batch of non-FPCA mail-in ballots, approximately 20,000. From here, we send out ballots

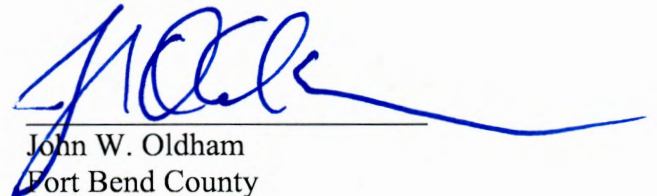
on a rolling basis as the requests come in and are processed as explained in Hollins' Declaration. Oct. 3, 2020 Hollins Decl. at ¶¶ 29–31.

25. In reality, voters returning mail-in ballots in person is more secure than returning by mail because (1) there is no danger of tampering or loss of the ballot in transit and (2) voters who return ballots in person must sign a roster and present voter ID. Thus, any concern about security of in-person drop-off of mail ballots is unfounded.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 5, 2020, in Rosenberg, Texas.

By:



John W. Oldham
Fort Bend County
Elections Administrator

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2020 that the foregoing document was served on all other counsel of record via CM/ECF. Additionally, I served the document on counsel anticipated to participate in this action:

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DATED: October 5, 2020

/s/ Justin C. Pfeiffer

JUSTIN C. PFEIFFER